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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

PETER NASH,

Defendant and Appellant.

E072012

(Super.Ct.No. SWF1103187)

OPINION

APPEAL from the Superior Court of Riverside County. John D. Molloy, Judge.

Affirmed.

Dawn S. Mortazavi, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Peter Nash was charged by felony complaint with receiving stolen property (Pen. Code¹, § 496, subd. (a), count 1) and possession of burglary tools (§ 466, count 2). The complaint also alleged that he had served two prior prison terms. (§ 667.5, subd. (b).) Pursuant to a plea agreement, defendant pled guilty to count 1, and the court dismissed the remaining counts and allegations. The court sentenced him to three years in county jail, with credit for time served, but suspended execution of the sentence and placed him on community supervision. Defendant subsequently admitted that he violated the terms of his community supervision. The court revoked his community supervision and sentenced him to 16 months. Defendant subsequently filed a petition pursuant to section 1170.18 to reduce his conviction to a misdemeanor. The People argued he had failed to meet his burden of proving the value of the stolen property. The court agreed and denied the request.

Defendant appeals from the denial of his petition. We affirm.

PROCEDURAL BACKGROUND

On January 11, 2012, defendant entered a plea agreement and pled guilty to one count of receiving stolen property. (§ 496, subd. (a), count 1.) The court sentenced him to three years in county jail, with credit for time served, but suspended execution and placed him on community supervision.

¹ All further statutory references will be to the Penal Code, unless otherwise indicated.

On July 31, 2012, the court found defendant in violation of the terms of his community supervision, revoked it, and sentenced him to 16 months.

In November 2014, California voters approved Proposition 47 (effective November 5, 2014). (§1170.18.) “Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors).” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) “Proposition 47 also created a new resentencing provision: section 1170.18. Under section 1170.18, a person ‘currently serving’ a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47.” (*Id.* at p. 1092.)

On July 20, 2018, defendant filed a petition pursuant to Proposition 47. (§ 1170.18.) In his petition, defendant did not check the box by which he would assert that the value of the property does not exceed \$950. On January 3, 2019, the court held a hearing on the petition and denied it, finding that defendant failed to meet his burden of proof.

On January 18, 2019, defendant filed a notice of appeal. On January 30, 2019, he filed an amended notice of appeal.

DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and one potential arguable issue: whether the court properly denied his Proposition 47 petition. Counsel has also requested this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has not done.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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McKINSTER
Acting P. J.

We concur:

MILLER
J.

RAPHAEL
J.